IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WP(C).No. 8577 of 2007(U)

PETITIONERS:
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1. S.MURUGAR SELVI,
W/O. LATE E.SATHEESH KUMAR, 144-145, DPF STREET,
PAPPANAICKENPALAYAM, COIMBATORE-37, TAMIL NADU.

2. S.DHINA ESWAR,
S/O. S.MURUGAR SELVI (MINOR), REPRESENTED BY
GUARDIAN MOTHER, THE 1ST PETITIONER RESIDING -DO-.

BY ADV. SRI.K.PRAVEEN KUMAR
SRI.P.K.ANIL
SRI.V.N.ACHUTHA KURUP (SR.)

RESPONDENTS:
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1. COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM.

2. STATE OF KERALA,
REPRESENTED BY SECRETARY, EXCISE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

3. ASSISTANT COMMISSIONER OF EXCISE,
TRICHUR.

4. NITHISH SIDHAN, S/O. V.K.SIDDAN,
"SRINIDHI, LAKSHMI NAGAR, WEST FROT,
TRICHUR DISTRICT.

5. T.K.SAJEEVAN, S./O. LATE KRISHNAN,
THASHNATH HOUSE, CHENTRAPPINNI, THRISSUR.

6. OMANA ASHOKAN, W/O. V.K.ASHOKAN,
"SREELAKSHMI, BEENNET ROAD, CHEMBUKKAVU, THRISSUR.

7. V.A.DANY, S/O. V.K.ASHOKAN,
RESIDING AT -DO-.

8. DEENI DIPIN, W/O. DIPIN,
"REVATHY", KURUMBUR HOUSE, BANK ROAD, KOZHIKODE.

9. RUKMINI, W/O. LATE ESWARA MOORTHY,
95-B SREENIVASA PURAM, AVINASHI MAIN ROAD,
AVINASHI, COIMBATORE DISTRICT, TAMILNADU.

BY ADVS. SRI.C.C.THOMAS R4,R6 AND R8
SRI.V.GIRI
SRI.L.RAJESH NARAYAN
SRI.MANURAJ. K.J
GOVERNMENT PLEADER SMT. ANU SIVARAMAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 8577/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PARTNERSHIP DEED DT. 19/2/98.

EXT.P2. COPY OF THE LETER SENT BY THE PETITIONER TO THE R1 DT. 26/4/05.

EXT.P3. COPY OF THE LAWYER NOTICE DT. 28/5/2005.

EXT.P4. COPY OF THE COMMUNICATION SENT BY THE R1.

EXT.P5. COPY OF THE DEED OF PARTNERSHIP DEED EXECUTED ON 30/5/2005.

EXT.P6. COPY OF THE ORDER OF THE R1 DT. 17/6/2005.

EXT.P7. COPY OF THE PARTNERSHIP DEED DT. 22/5/2005.

RESPONDENT'S EXHIBITS

EXT.R6A. COPY OF THE LICENSE OF FL 3 LICENSE NO. TSR 42 INTHRISSUR EXCISE ISSUED BY THE ASST. EXCISE COMMISSIONER, THRISSUR.

EXT.R6B. COPY OF THE DECLARATION DT. 30/09/2004 BY THE PETITIONERS AND R9.

EXT.R6C. COPY OF THE ORDER NO. XC6/472/05 DT. 28/5/2005 BY THE COMMISSIONER OF EXCISE, THIRUVANANTHAPURAM.

True copy

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THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.8577 OF 2007-U

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Dated this the 29th day of March, 2007.

JUDGMENT

Heard.

By Ext.P4, the petitioners' counsel was intimated by the Commissioner of Excise, in reply to Ext.P3, that as per order dated 28-5-2005, the Commissioner has accorded sanction to reconstitute the firm avoiding Sri.E.Sathish Kumar, the late husband of the first petitioner. It is also stated in Ext.P4 that the petitioners and the mother of late Sri.Sathish Kumar had submitted a joint declaration that they have voluntarily decided to opt out from the firm. If that be so, if at all, the petitioners had any grievance against the reconstitution, those are matters which could have been agitated before the competent civil court. As of now, by the end of March, 2007, the plea of the petitioners

is that the joint declaration stated to have been given by the petitioners is a fraudulent document. Apart from the long delay in taking that plea, the said issue is an issue of fact and that too, to be decided on the basis of evidence. Such an adjudication is not possible in this writ petition. I find no grounds to grant any relief in this writ petition. Hence, this writ petition is dismissed.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-